

MINUTES

**MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON LABOR AND EMPLOYMENT RELATIONS

Call to Order: By **CHAIRMAN TOM KEATING**, on January 26, 1999 at
3:00 P.M., in Room 413/415 Capitol.

ROLL CALL

Members Present:

Sen. Tom Keating, Chairman (R)
Sen. Fred Thomas, Vice Chairman (R)
Sen. Sue Bartlett (D)
Sen. Dale Berry (R)
Sen. Alvin Ellis (R)
Sen. Bob Keenan (R)
Sen. Walter McNutt (R)
Sen. Bill Wilson (D)

Members Excused: Sen. Vicki Cocchiarella (D)

Members Absent: None.

Staff Present: Gilda Clancy, Committee Secretary
Eddy McClure, Legislative Branch

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 202, SB 217; 1/18/1999
Executive Action: SB 217

HEARING ON SB 202

Sponsor: SEN. SUE BARLETT, SD 27, Helena

Proponents: Gene Fenderson, Montana Joint Heavy & Highways
Committee

Opponents: Mike Foster, Montana Contractor's Association
Byron Roberts, Montana Building Industry
Association

Opening Statement by Sponsor:

SEN. SUE BARTLETT, SD 27, Helena, stated SB 202 applies only to the construction industry and would require overtime wages be paid after eight hours of work in a single day when the person is working a 5-day work period or if the person is working a 4-day work period overtime would be paid after ten hours of work in a day. Currently, overtime is paid after 40 hours of work in a work week. The bill also makes provisions for days which are lost to bad weather, which is not an uncommon force in the construction industry. It specifies that whole or partial work days lost to bad weather are not counted for overtime purposes. Overtime would apply only when the hours are actually worked, whether it is a regular work day or a day worked to make up for bad weather. The bill makes clear the revised overtime provisions apply only to the workers who provide physical labor and construction projects and not to office workers or other related employees. She handed out **EXHIBIT(las20a01)** proposed by the Department of Labor and Industry and explained they basically make the terms used clearer to keep from misunderstandings.

Proponents' Testimony:

Gene Fenderson, Montana Joint Heavy & Highway Committee, explained his committee is an organization made up of approximately 8,000 members of the Teamsters, Operating Engineers, Laborers, Cement Masons, and Iron Workers' Unions. Senate Bill 202 effects only heavy and highway work and not building construction such as commercial buildings, bank buildings, etc.

School houses would not be covered. Heavy work would include work on dams, spillways, canals, and excavation sites. Highways are basically streets and highways across the state. For many years prior to 1985, because of safety reasons, anytime work passed eight hours in any kind of work week, 4-day, 5-day, etc., all overtime was paid over eight hours. In 1985, the Reagan administration notified the Department of Labor to overturn this, that it was no longer necessary. That was also the same time four 10-hour days were getting popular across the nation. We are not plowing new ground with this proposed legislation. With

heavy and highway work, the contracts are generally short, and become very important in inclement weather in the State of Montana. In 1986 and 1987 contractors became aware they no longer had to pay overtime so many of them went to a four 10-hour work week and began paying over time after ten hours. He said they believe we still have a number of contractors who would like to pay overtime after ten hours on a 4-day work week. However, they cannot do that because if they are competitive in their bidding process they cannot pay overtime after ten hours, especially when other contractors are not paying overtime after ten. We now have contractors throughout the state who are working contractors 12 to 16 hours per day and he does not think this should happen. He explained the contractors who would like to pay overtime after ten hours cannot if they want to be on a level playing field with other contractors. The other thing that is happening in the industry is there is a tremendous lack of skilled workers in this nation, especially in the blue collar trades. With the new highway bill, the demand for high-skilled workers will become greater. Our contractors in this state will be competing in the market for skilled people and we will have to entice them for a better wage structure. For economic development in this state these are the type of things we need to consider in order to keep our people competitive and make sure we get our projects completed on time.

{Tape : 1; Side : A; Approx. Time Counter : 8 - 12}

Opponents' Testimony:

Mike Foster, Montana Contractor's Association, stated they are opposed to this bill. They believe what the proponent described does occur in the construction world, but it is a result of negotiations between employers and employees, which is the proper place for those things to occur. The legislature should not be mandating this must be done. Employers have enough mandates and do not need this, too. In the first section of the bottom of page one, part B, the contractors have explained this is unworkable because it is too difficult to keep track of this, and if you do not keep track the bill states you go to jail, even if you make an error in the record keeping which is in Section 2, Part 3. This is an offensive segment of the bill to the contractors. This bill is not necessary. The process is working the way it is and should be allowed to continue in that manner.

Byron Roberts, Montana Building Industry Association, said they would like to go on record as opposing SB 202. The home building industry is a cottage industry, typically employees between four and five individuals and the typical work week is 40 hrs. He said sometimes that entails 4-nine hour days with Friday

afternoon off, sometimes it is 4-ten hour days with Fridays off. Workers enjoy this type of flexibility. He believes the workers and the employers would both be the losers in this scenario.

{Tape : 1; Side : A; Approx. Time Counter : 12 - 29}

Questions from Committee Members and Responses:

SEN. DALE BERRY asked **Gene Fenderson** in regard to the first page line 27 - 29, if you worked Monday through Wednesday eight hours, then worked Thursday and Friday four hours each, then Saturday you worked eight hours, would you receive overtime pay for four hours.

Mr. Fenderson explained not unless the employee worked over eight hours in one day.

SEN. BILL WILSON asked **Gene Fenderson** if there is anything in either federal or state statute prohibiting a 14 or 16 hr.-per-day work day.

Mr. Fenderson said there is not anything in statute and the industrial accident rate actually went up in the country after the 1985 change of the law. He mentioned that the Montana Contractors mentioned negotiating between the workers and employers, but the workers do not negotiate with their employers regarding whether or not they will work a 15-hr. day. He stated we are stopping good fair employers from paying overtime.

SEN. WALTER MCNUTT asked **Mr. Fenderson** how the employers are precluded from doing this.

Mr. Fenderson responded they are precluded if they are going to stay in business and receive a bit because there will be a cost factor which goes up if overtime is to be paid after 8 or 10 hours. They need to stay competitive on highway bids. He mentioned this is equalizing the playing field and keeping good jobs in Montana.

SEN. MCNUTT said he works in a competitive environment as the contractors do and he is having trouble accepting this is going to preclude contractors from getting contracts. He asked **Mike Foster** to comment on that.

Mr. Foster responded the best way to answer that is to let a contractor answer that.

Ed Maronick, Maronick Construction Company, answered he does not believe this will make contractors uncompetitive. The manner

this bill draft is written will make it virtually impossible to track this overtime. He doesn't believe there is any advantage to this bill. Federal law states that anybody who drives a truck who carries a commercial driver's license, has time limits on how long they can drive that truck. This limit is 10 hrs. per day; this covers a huge percentage of the people we are talking about. He said his company does not have a union contract and is voluntarily paying his people overtime and this is not making them uncompetitive.

Closing by Sponsor:

SEN. BARTLETT closed by addressing the opponent's comments. She said in Subsection B at the bottom of page 1 it is clearly intended to accommodate the reality of bad weather days in the construction industry and to allow for those make-up days without pushing people into an overtime situation prior to the 8 or 10-hour days for an accumulative total. If you worked four 10-hr. days and you worked Monday, Tuesday and Wednesday, and Thursday was bad weather and you could not work. On the make-up day the first five hours work would be at regular pay. Any hours over that would be over the ten would be paid at an overtime rate. If this language is not clear, **SEN. BARTLETT** stated they could amend the bill to make the language clear. Regarding the provision **Mr. Foster** spoke about in Section 2, she said this is a state law that deals with specific overtime and wage provisions for different industries. Each of those has a misdemeanor in it. It is her understanding that those were seldom or ever enforced. She said in reference to **Mr. Roberts'** concern, their intent is not to include the commercial nor home building industries and if that needs to be made clear in the definition, that can easily be done. In much of the heavy and highway construction work, the workers receive no lunch period, they eat on the job while they are working and they receive no coffee breaks. They are essentially working 14 to 15 hours per day straight through. This does pose a safety issue. She mentioned **Mr. Fenderson's** points about the additional money for the highway program and the competition for skilled workers throughout the nation is going to become an issue of real concern and we need to address the situation to keep our contractors competitive so they keep skilled workers here in Montana.

{Tape : 1; Side : A; Approx. Time Counter : 29 - 44}

HEARING ON SB 217

Sponsor: **SEN. KEN MILLER, SD 11, Laurel**

Proponents: **Mark Maki, Supervisor of the Apprenticeship & Training Program, Job Service Division, Department of Labor & Industry**
Max Griffin, Independent Electrical Contractors of Montana
Carl Schweitzer, American Subcontractors' Association of Montana

Opponents: **None.**

Opening Statement by Sponsor:

SEN. KEN MILLER, SD 11, Laurel, stated his bill addresses the electrical apprenticeship program which summarizes what an apprentice can do after he has completed the program and does not pass the test.

Proponents' Testimony:

Mark Maki, Supervisor of the Apprenticeship & Training Program, Job Service Division, Department of Labor & Industry, submitted his testimony **EXHIBIT(las20a02)** and spoke as a proponent to SB 217.

Max Griffin, Vice President, Independent Electrical Contractors of Montana, urged the Committee to support SB 217. He stated the electrical board of which he is a member, is in favor of this bill. The problem spoken of only affects 5% of their premises, but it is devastating to those 5%. He has spoken to other members of the industry who are in support of SB 217. On a personal basis, they employed a young man from Oregon who worked very hard and was a competent electrician. He had two small children. He completed the program and took the test December 6, and two weeks later he received his test results. That same day his wife had a baby. His test results were a 70%, which is a passing grade in most states. In Montana it is 75%. It turned out to be a bad day for everyone because he was sent home. This does not seem fair to anyone. They hope this bill will eliminate this situation. We have a real shortage of electricians in this state. According to national standards, we have about 15% fewer electricians in this country than we need. **EXHIBIT(las20a03)** was submitted for the Committee's information.

Carl Schweitzer, American Subcontractors' Association of Montana, said he phoned a person who would have stood as a proponent if he would have known about the hearing sooner. This man owns an electrical company here in Helena and has an employee who is

refusing to take the test because he is afraid that if he takes it and fails he will be out of a job. **Mr. Schweitzer** believes this is a technicality in the law which can easily be corrected with this bill.

Opponents' Testimony:

None.

Questions from Committee Members and Responses:

CHAIRMAN KEATING asked **Max Griffin** if a young man does not pass his apprentice test, can he work anymore?

Mr. Griffin responded if he fails the Journeyman's test, he cannot work until the next test cycle which is three months.

CHAIRMAN KEATING asked if that keeps him from being an apprentice.

Mr. Griffin answered he cannot be an apprentice. Under the way the statute is written now, the problem is it states in order for him to take the state test he must have completed the apprenticeship program. We are voicing that he need only complete the study and the hours, which is 8,000 hours. The employer must send a letter to the Apprenticeship & Training Department which says the apprentice is qualified to take the test. The employers would like him to qualify by completing the hours and the schooling and keep him in the program.

CHAIRMAN KEATING asked **Mr. Griffin** if he passes the test and becomes a journeyman, if he gets a raise.

Mr. Griffin responded he does get a raise.

CHAIRMAN KEATING said if there are others in support of the bill it would be helpful if they would E-Mail the Committee members.

SEN. BILL WILSON inquired about how many chances an apprentice has to take the test.

Mr. Griffin said if you fail the first test, you can take the same test in three months. If you fail that one, you have to wait six months and if you fail that you wait one year. After that year he is unsure what happens.

SEN. DALE BERRY asked if the apprenticeship has a period of time attached.

Mr. Griffin answered it is based on 8,000 hours of on the job training.

SEN. BERRY thought a solution might be if the test is failed, to allow the apprentice to continue working as an apprentice; to allow him up to six months to continue to work at the same wage.

Mr. Griffin responded this bill does this.

{Tape : 1; Side : B; Approx. Time Counter : 44 - 47}

Closing by Sponsor:

SEN. MILLER closed the hearing by restating the employer must sign the apprentice off as completing his apprenticeship program before he can take the test. Under this bill, the employer does not have to sign him off. It allows the apprentice to take the test before being signed off and he can continue to work. This is a good example of a good-paying job in Montana for these apprentices that can take the test to become electricians.

EXECUTIVE ACTION ON SB 217

Motion/Vote: **SEN. MCNUTT** moved that **SB 217 DO PASS. Motion carried unanimously.**

ADJOURNMENT

Adjournment: 3:47 P.M.

SEN. TOM KEATING, Chairman

GILDA CLANCY, Secretary

TK/GC

EXHIBIT (las20aad)